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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, FEBRUARY 5, 2003

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE-2000-00551

Ex Parte: In the matter concerning the application of Virginia Electric and Power Company d/b/a Dominion Virginia Power for approval of a plan to transfer functional and operational control of certain transmission facilities to a Regional Transmission Entity

**DISMISSAL ORDER**

On January 7, 2003, Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion Virginia Power" or the "Company") filed with the State Corporation Commission ("Commission") a Motion to Dismiss its application for approval to transfer functional and operational control to a regional transmission entity ("RTE").

Sections 56-577 and 56-579 of the Virginia Electric Utility Restructuring Act (the "Restructuring Act"), Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia, require the Commonwealth's incumbent electric utilities to join or to establish RTEs by January 1, 2001, and to seek authorization from the Commission to transfer the management and control of their transmission assets to such RTEs.<sup>1</sup> Pursuant to the Restructuring Act, the Commission

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<sup>1</sup> Specifically, § 56-577 A of the Restructuring Act states in pertinent part that:

[O]n or before January 1, 2001, each incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity shall join or establish a regional transmission entity, which entity may be an independent system operator, to which such utility shall transfer the management and control of its transmission system, subject to the provisions of § 56-579.

Section 56-579 A 1 of the Restructuring Act provides in pertinent part that:

developed and established rules and regulations under which incumbent electric utilities owning, operating, controlling, or having an entitlement to transmission capacity within the Commonwealth may transfer all or part of such control, ownership, or responsibility to an RTE, 20 VAC 5-320-10 et seq. (the "RTE Rules").<sup>2</sup>

On October 16, 2000, Dominion Virginia Power submitted its application pursuant to the RTE Rules in order to meet the statutory deadline set forth in the Restructuring Act. The Company requested approval of the transfer of functional and operational control of its transmission facilities located in the Commonwealth to the proposed Alliance Regional Transmission Organization ("Alliance RTO"). The Alliance RTO was to be created pursuant to federal regulations issued by the Federal Energy Regulatory Commission (the "FERC").<sup>3</sup>

The history of this proceeding is extensive. Since Dominion Virginia Power's application was filed with the Commission, numerous significant events have occurred both at the state and federal level that have resulted in delays in the approval of the transfer of the Company's transmission system to an RTE. The FERC issued several rulings in the Alliance RTO

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[N]o such incumbent electric utility shall transfer to any person any ownership or control of, or any responsibility to operate, any portion of any transmission system located in the Commonwealth without obtaining the prior approval of the Commission, as hereinafter provided.

<sup>2</sup> Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter concerning participation of incumbent electric utilities in regional transmission entities, Case No. PUE-1999-00349, 2000 S.C.C. Ann. Rept. 430.

<sup>3</sup> See Alliance Companies, et al., Docket Nos. ER99-3144-003, ER99-3144-004 and ER99-3144-005. The proposed Alliance RTO was to consist of the following member companies: American Electric Power Service Corporation on behalf of Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company ("AEP"); Consumers Energy Company; The Dayton Power and Light Company ("Dayton Power"); The Detroit Edison Company, FirstEnergy Corp. on behalf of The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and the Toledo Edison Company; the Northern Indiana Public Service Company; and Dominion Virginia Power (collectively the "Alliance Companies"). The proposed Alliance RTO was to include incumbent electric utilities who provided service in the states of Illinois, Indiana, Kentucky, Michigan, Missouri, Ohio, Pennsylvania, North Carolina, Tennessee, Virginia, and West Virginia. Note that the phrases Regional Transmission Entity or RTE and Regional Transmission Organization or RTO may be used interchangeably.

proceedings. On July 27, 2001, the Commission issued an order suspending the procedural schedule originally established in this proceeding based on anticipated Alliance Companies' filings at the FERC related to the Alliance RTO proposal and in the interest of conserving legal and regulatory resources.<sup>4</sup>

After over two years of consideration, including an initial ruling conditionally approving the Alliance RTO, the FERC disapproved the Alliance RTO on December 20, 2001, and dismissed in whole the Alliance Companies' proposal.<sup>5</sup> In light of this ruling, on January 29, 2002, the Commission issued an order denying a motion by Dominion Virginia Power to reestablish a procedural schedule in this docket.

On April 25, 2002, the FERC issued an order directing the Alliance Companies to make compliance filings identifying which RTO they planed to join, and stating whether their participation would be collective or individual. Dominion Virginia Power made its compliance filing on May 28, 2002. The Company stated that it had filed a statement with the FERC on March 5, 2002, indicating that it was continuing the process of consulting with the Commonwealth and the State of North Carolina to determine their support for Dominion Virginia Power joining the Alliance Companies within the Midwest Independent System Operator or other RTO efforts. In addition, Dominion Virginia Power stated that the Company also was actively working with PJM Interconnection, LLC ("PJM"), on an individual basis, as well as collectively with the Alliance Companies.

Subsequently, Dominion Virginia Power and PJM entered into a Memorandum of Understanding dated June 24, 2002 to establish PJM South. Thereafter, on October 1, 2002, the

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<sup>4</sup> This Order was in response to a Commission Staff motion and with the concurrence of Dominion Virginia Power.

<sup>5</sup> See Alliance Companies, et al., 97 FERC ¶ 61, 327 (2001). In its Order dismissing the Alliance application, in brief, the FERC found the proposed Alliance RTO lacked key requirements of FERC's Order 2000.

Company and PJM entered into an agreement to implement PJM South. Under that agreement, Dominion Virginia Power would: (i) become a member of PJM; (ii) transfer functional control of its transmission facilities to PJM for inclusion in a new PJM South Region; (iii) integrate its control area into the PJM Interchange Energy Market and certain other PJM markets; and (iv) otherwise facilitate the establishment and operation of PJM as the RTO and, to the extent the FERC's final Standard Market Design rulemaking<sup>6</sup> requires, the Independent Transmission Provider with respect to Dominion Virginia Power's transmission facilities.

As indicated above, Dominion Virginia Power filed its Motion to Dismiss this proceeding on January 7, 2003. In support of its motion, the Company states that the Alliance RTO failed to meet the characteristics specified in FERC Order 2000, and that the Alliance RTO effort is no longer viable.

Pursuant to 5 VAC 5-20-110 of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 et seq., interested parties were required to file any response to the Company's Motion to Dismiss on or before January 29, 2003. No responses were received.

NOW UPON CONSIDERATION of the matter, we are of the opinion and find that the motion to dismiss should be granted as described herein.

As Dominion Virginia Power's motion indicates, the Company's plans to participate in the Alliance RTO are not feasible. Therefore, the application for our approval to transfer functional and operational control of Dominion Virginia Power's transmission facilities to the Alliance RTO is no longer viable. Accordingly, we will dismiss the application currently filed in this docket, Case No. PUE-2000-00551. We will, however, order this docket to remain open for a future application by Dominion Virginia Power for approval of the Company's participation in

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<sup>6</sup> Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design, 67 Fed. Reg. 55,543 (to be codified at 40 C.F.R. pt. 35) (proposed Aug. 29, 2002).

an RTE. Dominion Virginia Power simultaneously shall serve upon each individual who has filed a notice of participation as a respondent in this proceeding a copy of any application made to the Commission, as well as all other materials filed in this docket.

ACCORDINGLY, IT IS ORDERED THAT:

(1) The October 16, 2000, application filed by Dominion Virginia Power with the Commission for approval of the transfer functional and operational control of its transmission facilities located in the Commonwealth to the Alliance RTO is hereby dismissed.

(2) This docket is to remain open for a future application by Dominion Virginia Power for approval of the Company's participation in an RTE

(3) Dominion Virginia Power shall serve upon each respondent a copy of its application and all other materials filed with the Commission in this proceeding.

(4) This matter is continued generally.

## COMPETITIVE SERVICE PROVIDERS IN VIRGINIA

Mark S. Berndt  
AEP Retail Energy, LLC  
1 Riverside Plaza  
Columbus, OH 43215-2373

Mark S. Kumm  
Pepco Energy Services, Inc.  
2000 K Street NW, Suite 750  
Washington, DC 20006

Thomas J. Butler  
Dominion Retail, Inc.  
625 Liberty Ave.  
Pittsburgh, PA 15222

Laura Shaw  
Washington Gas Energy Services, Inc.  
13865 Sunrise Valley  
Herndon, Virginia 20171-3401

August Wallmeyer  
Virginia Independent Power Producers  
707 East Franklin Street, Suite D  
Richmond, Virginia 23219

Dr. John H. Mason  
Energy Window, Inc.  
4750 Walnut, Suite 106  
Boulder, CO 80301

Kathleen A. Gaston  
Virginia Energy Consortium  
3504 Northridge Drive  
Baltimore, MD 21208

Mary Elizabeth Tighe  
Amerada Hess Corporation  
2800 Eisenhower Ave, 3rd Fl  
Alexandria, Virginia 22314

Charles F. Dalphon  
NOVEC Energy Solutions, Inc.  
10323 Lomond Drive  
Manassas, Virginia 20108-0875

Mitch King  
Old Mill Power Co.  
103 Shale Place  
Charlottesville, Virginia 22902-6402

Marc A. Hanks  
Select Energy, Inc.  
107 Selden Street  
Berlin, CT 06037-1616

Benjamin H. Thompson, IV  
Cook Inlet Power, LP  
10100 Santa Monica Blvd, Suite 2525  
Los Angeles, CA 90067

Carolyn Conrad  
Allegheny Energy Supply Co., LLC  
Regulatory Analyst  
4350 Northern Pike  
Monroeville, PA 15146-2841